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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/493,818	01/28/2000	Mark Alperovich	109289.00121	2697

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BLANK ROME LLP
600 NEW HAMPSHIRE AVENUE, N.W.
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EXAMINER

ANGEBRANDT, MARTIN J

ART UNIT PAPER NUMBER

1756

DATE MAILED: 12/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/493,818

Applicant(s)

ALPEROVICH ET AL.

Examiner

Martin J Angebranndt

Art Unit

1756

--The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

THE REPLY FILED 03 February 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires eight months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 03 December 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☒ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 11-18.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


Martin J Angebranndt
Primary Examiner
Art Unit: 1756

Continuation of 2. NOTE: The applicant has proposed inserting language indicating that the information layer is transparent. It is not clear how that can be with the information layer including a fluorescent DYE. The composition may be transparent in some portion of the electromagnetic spectrum, but to allow writing or excitation of the fluorescent dye, absorption must take place. The applicant also does not point out specifically where in the specification a description of the transparency is found other than a broad statement that it is clear from the specification.

Continuation of 5. does NOT place the application in condition for allowance because: The applicant asserts that the medium of Tamura et al. '792 would not function if the additives described in that reference as additives for the recording layer are used and that the use of adhesion improving interlayers, though disclosed in that reference would not be obvious, but provides no evidence to support this. The applicant argues as if the cyanine dyes of the reference, the class of which is described in the instant specification on page 5 at line 10, reflect the light, rather than allow it to be transmitted. First, the amendment argued has not been entered and second, the arguments fails to appreciate the fact that absorption, transmission and reflection inherently occur with all materials to varying degrees. The applicant may be trying to indicate that the amount of fluorescent dye is small, but the proposed language does not really address that correctly. It may be that the amount of dye used in the examples disclosed in the instant invention is less than that used in the references, but to indicate that the layer is transparent is flawed. Even if the language of the applicant was added, it certainly does not exclude the presence of a reflective layer as long as there is a recording layer present which meets the recited limitations of the claims. The proposed limitation does nothing more than speak to one of the layers, not other layers of the recording medium. The applicant argues that a particular adhesive need to be used, but there is no EVIDENCE of criticality on the record and the various undercoatings recited are taught by Tamura et al. . The rejections stand.


12/14/02